Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60

COMMENTS OF COLORADO HEALTH CARE CONNECTIONS AND ROCKY MOUNTAIN HEALTHNET

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I. SUMMARY/INTRODUCTION

Colorado Health Care Connections and Rocky Mountain Health Net submit these joint comments to focus the Commission's attention on two particular paragraphs of the Notice of Proposed Rulemaking (NPRM). Colorado Health Care Connections (CHCC) is a participant in the FCC Rural Health Care Pilot Program (Pilot Program), serving 92 hospital and clinic sites predominantly in rural Colorado. CHCC received its Funding Commitment Letter (FCL) on March 12, 2010 for $4,621,052.45. Rocky Mountain Health Net (RMHN) is also a participant in the Pilot Program, serving 105 behavioral healthcare sites throughout Colorado. RMHN received its FCL on March 12, 2010 for $5,064,167.94. Through independent competitive procurements, both CHCC and RMHN selected Qwest Communications as their service provider through 10-year operational leases. These leases provide the members of CHCC and RMHN dedicated private, secure, broadband Ethernet service.

These Comments strongly recommend revision to the Commission's proposal in Paragraph 52[1] and clarification of Paragraph 107[2] of the NPRM.[3] Paragraph 52 and Section 54.659 of the proposed rule indicates that short-term or operating leases are not eligible for funding under the health infrastructure program. Below, we argue that short-term leases (when of sufficient duration, i.e., 10 years), and of sufficient scope (i.e., regional or statewide) to community anchor institutions provide an irreplaceable and unique mechanism for investment in broadband infrastructure. To disallow this mechanism is to disenfranchise telecommunications providers from the aggregated demand of the health care sector as an anchor institution and denies them the opportunity to use this aggregated demand in making economically viable investments in infrastructure improvements, especially in largely rural and frontier states. Creating eligibility for these kinds of operating leases for health care as an anchor institution will promote broadband deployment to serve not only health care facilities, but other community anchor institutions and private telecommunications consumers including as homes and businesses.

We also urge the Commission to clarify the term, "participants" as used in Paragraph 107. We believe in the context of Paragraph 107 this term applies—and should apply—to the Rural Health Care Pilot Program consortia created as a result of the Commission's Order of November 16, 2007 in this Docket.[4]

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[1] Rural Health Care Universal Service Support Mechanism, WC Docket No. 02-60, Notice of Proposed Rulemaking ("NPRM"), para. 52. *No Short-Term Leases.* The Commission proposes that short-term or operating leases are not eligible for funding under the health infrastructure program. Because the primary focus of the health infrastructure program is the construction and sustainability of broadband infrastructure facilities, the Commission does not believe that short-term or operating leases are appropriate. In a short-term lease, ownership of the funded asset would revert back to the vendor at the conclusion of the term of the lease, conferring a benefit on the vendor and not the health care provider. This is inconsistent with the goal of funding infrastructure programs for the creation of sustainable, long-term dedicated broadband networks used for health care purposes. The Commission therefore proposes that short-term or operating leases are not an acceptable vehicle for deploying facilities under the health infrastructure program. The Commission invites comment on this proposal.

[2] *Id.*, NPRM para. 107. *Opting into the Health Broadband Services Program.* Under the Pilot Program, the Commission permitted participants to seek support for both the recurring and non-recurring costs associated with the deployment of broadband health care networks and the advanced telecommunications and information services provided over those networks. When the Pilot Program ends, some participants may wish to transition to the new health broadband services program to subsidize the recurring costs formerly funded by the Pilot Program. The Commission seeks comment on whether Pilot Program participants whose original request for competitive bids included both nonrecurring and recurring costs should be permitted to transition to the health broadband services program without undergoing a new competitive bidding process.

[3] Commenters note that when published in the Federal Register on August 9, 2010, the NPRM in WC Docket No. 02-60 contained different paragraph numbers then when the Commission initially posted the NPRM on its website. Paragraphs 52 and 107 in the Federal Register publication we paragraphs 58 and 113, respectively in the NPRM originally issued by the Commission. We refer to the paragraph numbers as they are contained in the Federal Register.

[4] Rural Health Care Universal Service Support Mechanism, WC Docket No. 02-60, FCC 07-198, Order, November 16, 2007 (hereinafter referred to as the November 2007 Order).

II. THE RURAL HEALTH CARE SUPPORT MECHANISM SHOULD INCLUDE OPERATING LEASES OF AT LEAST TEN (10) YEARS

The Commission proposes that short term or operating leases would not be eligible for funding under the health infrastructure program.[5] Revision of the Commission's proposal in Paragraph 52 to allow leasing under appropriate conditions is of material importance to CHCC and RMHN as Pilot Program participants. These two projects have entered into 10-year operating leases with Qwest Communications. Agreements of this kind were specifically authorized by the Commission in the November 2007 Order.[6] For the record, both projects are now in production mode and actively connecting their respective participating health care providers. CHCC and RMHN are concerned that the procurement strategy authorized by the Commission in the November 2007 Order may now become impermissible unless the eligibility requirements described in Paragraph 52 of the NPRM are modified in an appropriate way that properly recognizes both the Commission's concerns as stated in Paragraph 52 and the unique and irreplaceable investment method to promote broadband deployment to benefit rural health care providers through of operating leasing. Permitting operating leases will lead to an accrued benefit to the health care sector, other community anchor institutions and the public at large.

A. AGGREGATION OF DEMAND AS STIMULUS TO TELECOMMUNICATIONS INVESTMENT

A well-known strategy to stimulate telecommunications investment in rural areas of the nation is to aggregate demand. Requiring health care networks to own their own infrastructure reduces demand and weakens the overall business case of rural telecommunications investors. On the other hand, pooling the demand of many and disparate rural health care providers into one purchasing body aggregates demand and improves the economic business case for investment. Prior to the CHCC and RMHN projects, the State of Colorado employed this strategy through an operating lease that resulted in material improvement to Colorado's telecommunications infrastructure.

In 1990, the State of Colorado entered into a long-term lease (not a capital lease, but an operating lease) with Qwest Communications and its partners to deploy fiber optic broadband ATM services to every county seat in Colorado. The effort was conceived of as a public-private partnership. For the public's part, the State would lease services enabled by the fiber as a private network for its official business. The approximate $9.5 million per year guaranteed revenue stream from the 10-year lease was sufficient to stimulate Qwest and its partners to invest $60 million in excess capacity that was made available to all as an open network called the Colorado High Speed Digital Network. Were it not for the initiative taken by the State to aggregate its substantial demand for broadband services, it is possible a statewide fiber optic network might not exist in Colorado. As a consequence of this operating lease and public-private partnership, the public (i.e., State) is served with 5.1 Gigabits per second total subscribed connectivity serving 2,738 sites. The construction of this fiber backbone facilitated the ability of telecommunications and cable providers to expand their networks to the point where today, cable modem and DSL broadband services are offered in 97 percent of Colorado county seats.[7]

Thus, we assert that an operating lease can be structured as a public-private partnership that accrues benefit to both the health care sector and the private sector and that this benefit can survive the term of the lease; such leases should be allowed as part of the health infrastructure program.

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[5] NPRM, *supra.*, para. 52.

[6] November 2007 Order, para. 74. "Further, to the extent that a selected participant subscribes to carrier-provided transmission services (e.g., SONET, DS3s) in lieu of deploying its own broadband network and access to advanced telecommunications and information services, the costs for subscribing to such facilities and services are also eligible."

[7] Department of Personnel & Administration, Division of Information Technologies, State of Colorado. Multiuse Network/MNT: Annual Report–FY2005-2006.

B. APPROPRIATE OPERATING LEASE TERM

The CHCC and RMHN leases in the Pilot Program, as well as the State of Colorado lease referenced above, are/were for 10-year terms. A distinction should be made between what are truly short-term leases (e.g., 1-3 years) and leases such as these that arguably fall somewhere between short and long term. Therefore, in our proposal below, we make distinctions that disallow truly short-term leases while allowing longer-term operating leases if they also meet the additional criteria discussed below.

C. PUBLIC INTEREST TEST

As discussed, the ten year-term, statewide telecommunications lease experience in Colorado has lead to demonstrable public good. In the case of the State of Colorado system, the new infrastructure, part of which was dedicated in service to the State, allowed sufficient excess capacity to support broadband providers of DSL and cable modem services in every county seat. In the case of the two Pilot Program participants, our combined $10 million/year lease payment over a 10-year term made it economical for Qwest to independently invest approximately $17 million to build out more than 25 miles of new fiber construction to support this project.

Thus, in our proposal below, we include the requirement that RFPs issued in accordance with Form 455, when the procurement is to be an operating lease, contain a section in which the provider is required to make good faith estimates as to the added broadband deployment benefits the lease is likely to have beyond the health care sector that will survive the term of the lease.

D. CONSIDERATION OF GEOGRAPHIC SCOPE

The state project described above, and our two Pilot Program projects cover the entire state of Colorado. For our Pilot projects, this was done in the spirit of the Pilot Program to form statewide or regional broadband health care networks. The requirements of NPRM Section J regarding "Facilities Ownership, IRU or Capital Lease Requirements"[8] pose a significant barrier to the goals of the health infrastructure program when the geographical scope of the network is statewide. For example, for the lease arrangements with CHCC and RMHN, Qwest had to enter into partnership with five CLECs to provide the coverage necessary to serve all of Colorado. Such complex leasing arrangements for IRUs or capital leases at a statewide scope would clearly be burdensome to health care organizations focused on their primary mission.

E. CONSIDERATION OF NETWORK COMPLEXITY

The CHCC and RMHN networks are not simple point-to-point configurations, but rather are sophisticated layer 3 networks appropriate to service health care providers. While the design of the networks required significant engineering, the ongoing operation of the networks is a technical undertaking outside the scope of the core health care competency and primary mission of CHCC, RMHN or its members. When such a large-scale (over 200 members) network is to be deployed and operating, an operating lease is an appropriate vehicle. Again, owning telecommunications assets and supervising their operation is not the mission of the health care sector and for many health care facilities, senior management approval for such an auxiliary enterprise would be difficult to obtain. In many cases, a telecommunications service provider may be the preferred solution to operating a large scale managed services network. To provide a better understanding of the technical scale of our networks, consider the following brief technical description of our operational lease with Qwest. The specific managed Ethernet services include: IP addressing and routing; 7 X 24 network monitoring; architectural support for private sub-networks emulating hub-and-

[8] NPRM, *supra.*, paras. 49-53.

spoke topologies; Quality of Service traffic management; a single gateway firewall between the Network and access to both the commodity Internet and the FRGP; read-only SNMP and Sflow access to designated CPE routers; and, multicast capability. All systems reside or are based in Qwest facilities. Qwest has subcontracted with major ILECs and CLECs in Colorado to provide ubiquitous transport statewide.

Neither CHCC nor RMHN would have been able to design, deploy and manage a network of such scale without an operating lease of the facilities from a telecommunications vendor acting as the primary provider, and engaging the necessary additional vendors to provide statewide coverage meeting the technical requirements of the network. Therefore, in our proposal below, we suggest that a criterion for eligibility long-term operating leases is the complexity of the target network.

F. AN OPERATING LEASE OF SUFFICIENT TERM WILL CONTINUE TO OFFER BROADBAND BENEFITS TO RURAL HEALTH CARE PROVIDERS AFTER THE LEASE TERM ENDS

The NPRM asserts that *"in a short-term lease, ownership of the funded asset would revert back to the vendor at the conclusion of the term of the lease, conferring a benefit on the vendor and not the health care provider."* [9] While this may be the outcome, it does not need to be. If the conditions we describe above apply, then certainly it will not be the outcome. First, if the lease is of a sufficiently long term (e.g., 10-year operational lease) and leads to a material improvement in the telecommunications infrastructure in order to serve the health care lessee, then at the termination of that lease, those improvements will remain in the telecommunications provider's plant and equipment and it will be in their best economic interests to use those assets in providing goods and services to their customers—the public. As such, it is not a bad thing that a net result of a health care infrastructure lease is to confer a benefit on the vendor because, that is exactly what the goal of infrastructure improvement is, e.g., to increase the broadband service capacity of our nation's telecommunications providers. If such increased capacity is available to the public after the term of the lease, so it is also available to the health care sector as a representative component of the public. The Commission should require that the facilities developed be made publically available at competitively neutral prices for similarly situated users, consistent with the requirements of the American Recovery and Reinvestment Act's Broadband Infrastructure Program.[10] This argument also rebuts the notion that any short-term operating lease is *"inconsistent with the goal of funding infrastructure programs for the creation of sustainable long-term dedicated broadband networks used for health care purposes."* Such leases are not inconsistent if they are of sufficient duration, and if it is apparent at the outset that the health care lease will result in material and permanent improvements in the network which in turn becomes available to other community anchors and the public at large.

G. RECOMMENDATION

For the foregoing reasons, the Commission should modify its proposal to make operating leases of at least ten years in duration or more eligible, under certain conditions. We propose the following:

Operating leases are eligible for funding if all of the following conditions are met:
1) The term of the operating lease must be at least 10 years.
2) The applicant's proposed service area is greater than 25% of the state (or states) contained therein.

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[9] NPRM, *supra.*, para. 52.
[10] Notice of Funds Availability, Department of Agriculture, Rural Utilities Service RIN 0572-ZA01, Broadband Incentives Program; and, Department of Commerces, National Telecommunications and Information Administration, RIN 0660-ZA28, Broadband Technology Opportunities Program. Federal Register 74(130);33104-34, Thursday, July 9, 2009.

3) The technical scale of the network can be characterized as a secure, layer3 IP network with Quality of Service routing capable of routing voice/data/video.
4) The anticipated public benefit and material improvement to the telecommunications infrastructure that will result from the operating lease shall be documented during the competitive procurement process in a response to a Request for Proposal section entitled, "Public Interest." In this section, the vendor will include a good faith representation of the services that will be made available to the general public as a result of material improvements in their network enabled by funds from the Rural Health Care Support Mechanism both during and surviving the term of the lease.
5) All services described in Condition 4 above shall be made available to any subscriber upon competitively neutral terms and conditions.

The Commission should acknowledge that when these conditions are met, the asset funded through the long-term operating lease supports the health infrastructure program goal of the construction and sustainability of broadband infrastructure facilities available to the public. Given these conditions, even though ownership of the funded asset remains with vendor at the conclusion of the lease term, the benefits so conferred on the vendor become available to the general public, including health care providers during and after the term of the lease. This is consistent with the goal of funding infrastructure programs for the creation of sustainable, long-term dedicated broadband networks used for health care purposes.

H. ALTERNATIVE SOLUTION TO ELIGIBILITY OF OPERATING LEASES

If the Commission is not willing to permit eligibility for operating leases, consistent with the conditions we have described above, we urge the Commission to give special consideration to Pilot Program participants who have completed competitive procurement of operating leases for their networks, who have received Funding Commitment Letters, and who materially meet the criteria set forth in our recommendation contained in subsection G above. These Pilot Program participants should be grandfathered into the new health infrastructure program such that they may continue the use their operating lease strategy to competitively procure the continued build-out of their networks, enabling them to add to managed services networks run through operational leases.

III. PILOT PROGRAM PARTICIPANTS SHOULD BE PERMITTED TO TRANSITION TO THE HEALTH BROADBAND SERVICES PROGRAM WITHOUT UNDERGOING A NEW COMPETITIVE BID PROCESS

The Commission raises an important issue in Paragraph 107 of the NRPM[11]. The subject paragraph asks whether participants of the Pilot Program can transition to the new health broadband services program to without undergoing a new competitive bidding process. We strongly urge the Commission to answer this in the affirmative.

A. THE TERM "PARTICIPANT" SHOULD BE CLARIFIED

We also urge the Commission to clarify the term, "participants" as used in Paragraph 107. We believe in the context of Paragraph 107 and Sections 54.641(b) and 652 of the proposed rules this term applies—and should apply—to the consortia of rural health care providers that have been created in order to seek funding through the Pilot Program. Hence, the term "participant" should refer to the Pilot Program participant. The Health Care Provider members of the Pilot Program participant have delegated authority to the consortium (such as CHCC and RMHN) to act on its behalf in matters before the Commission through a Letter of Agency. This includes authority to act on their behalf in the participation in the health broadband services program. Therefore, the transitioning of the Pilot Program participant from the Pilot

[11] *See*, note 2, *supra*.

Program to the health broadband services program would be effected at the consortium level, using a mechanism to aggregate its membership into one application for participation in the health broadband services program such as those mechanisms used to aggregate participation in the Pilot Program (e.g. Form 466-A).

B. RECOMMENDATION

We propose language to make the special connotation of "participants" as used in Paragraph 107 explicit. The term "participant" has the specific connotation in Paragraph 107 as "Pilot Program participant." We also wish to clarify that the term is used with different connotation elsewhere in Section II, Health Broadband Services Program of the NPRM, specifically, to refer to *individual* health care providers. The language we propose is as follows:

Opting into the Health Broadband Services Program. Under the Pilot Program, the Commission permitted participants to seek support for both the recurring and non-recurring costs associated with the deployment of broadband health care networks and the advanced telecommunications and information services provided over those networks. For the purposes of opting into the Health Broadband Services Program as described in this Order, "participant" refers to consortia or other multi-health care provider organizations having received awards in the November 2007 Order to participate in the Pilot Program. When the Pilot Program ends, some participants may wish to transition to the new health broadband services program to subsidize the recurring costs formerly funded by the Pilot Program. Pilot Program participants whose original request for competitive bids included both nonrecurring and recurring costs are permitted to transition to the health broadband services program without undergoing a new competitive bidding process.

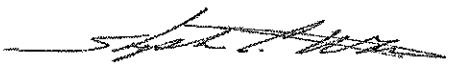
IV. CONCLUSION

For the reasons we have described above, the Commission should allow participants in the health infrastructure program to utilize program funding for operating leases with terms of at least ten (10) years, and subject to the conditions described herein. Failure to allow this use of program funding will create a hardship for rural health care providers, especially those that are Pilot Program participants and have already entered into such leases. Further, the Commission should clarify that a "participant" that wishes to transition from the Pilot Program to the health broadband services program can be a consortia or other group of multiple health care providers, that have aggregated their demand for services through one purchasing entity. We believe that these changes will further the goals of the Commission to facilitate the deployment and use of high speed broadband networks for rural health care providers in the United States.

Dated this 7th day of September 2010.

Respectfully submitted,

COLORADO HEALTH CARE CONNECTIONS



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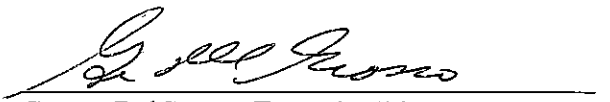
By: 

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